IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13777 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE BANK OF SAURASHTRA - Petitioner(s)
Versus
PAN PIPES RESPLENDENT LTD & 3 - Respondent(s)

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Appearance :

MR AS VAKIL for Petitioner(s) : 1,
MR BAIJU JOSHI for Respondent(s) : 1 - 3.
MR PV NANAVATI for Respondent(s) : 4,
MR VIBHUTI NANAVATI for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 20/11/2006

ORAL JUDGMENT

By filing this petition under Article 227 of

the Constitution of India, the petitioner has prayed to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction to quash and set aside the order dated 5th April, 2005 passed by 3rd Joint Civil Judge (S.D.), Vadodara below Exh.62 in Special Civil Suit No.65 of 2001 rejecting the application made by petitioner/defendant no.1 to send the suit to Debts Recovery Tribunal at Ahmedabad to be disposed of with Original Application No.50 of 2001 pending before it.

2. It is the case of the petitioner that the petitioner advanced financial facilities to respondent no.1. The respondents no.2 and 3 are the guarantors for the financial facilities sanctioned to the respondent no.1. As the respondents failed to regularise the accounts, the petitioner filed proceedings for recovery of its dues before the Debts Recovery Tribunal at Ahmedabad and it was registered as Original Application No.50 of 2001. The respondents appeared in the said proceedings. The respondents filed a Special Civil Suit No.65 of 2001 against the petitioner and another and prayed for damages. The petitioner filed Application (Exh.62) in Special Civil Suit No.65 of 2001 for transferring the suit from the Civil Court to the Debts Recovery Tribunal at Ahmedabad, relying upon the judgment of the Apex Court in the case of **UNITED BANK OF INDIA vs. ABHIJIT TEA CO. (P) LTD. reported in [(2000) 7 SCC 357]** contending that the suit is a counter claim. The learned Trial Judge, after hearing the learned

advocate for the parties, rejected the said application by his order dated 5th April, 2005 and hence, this petition.

3. I have heard learned advocate Mr. Vakil for the petitioner and Mr. Joshi for the contesting respondents no.1, 2 and 3.

4. It transpires from the pleadings that the petitioner had filed proceedings for recovery of its dues from the respondents who had, prior to institution of the said proceedings, filed a suit in the Civil Court claiming damages from the petitioner wherein the petitioner moved an application to transfer the suit to Debts Recovery Tribunal on the ground that the averments made in the suit by the respondents were counter-claim under Section 19(8) to (11) of Recovery of Debts Due to Banks and Financial Institutions Act and, therefore, is a cross-suit and in such a situation the suit is required to be sent to Debts Recovery Tribunal at Ahmedabad.

5. The respondents had relied on the judgment of the **UNITED BANK OF INDIA, CALCUTTA vs. ABHIJIT TEA CO. PVT. LTD. AND OTHERS reported in AIR 2000 SC 2957** wherein the Hon'ble Supreme Court has held that the word 'counter-claim' in Section 19(8) to (11) which is equated to a cross-suit, includes a claim even if it is made in an independent suit filed earlier. If a set-off or a counter claim is to be equated to a

cross-suit under Section 19 afortiori, there can be no difficulty in treating the cross-suit as one by way of set-off and counter claim, and the proceedings ought to be dealt with simultaneously with the main suit. The Hon'ble Supreme Court further held that both the suits fall under the Recovery of Debts Due to Banks and Financial Institutions Act and, therefore, required to be tried by the Tribunal and hence, liable to be transferred to the Tribunal.

6. In the present case, the learned advocate for the respondents has relied upon a judgment of **INDIAN BANK vs. ABS MARINE PRODUCTS (P) LTD. reported in (2006) 5 SCC 72** wherein, after considering the law laid down in Abhijit Tea's case (supra), the Hon'ble Supreme Court held that the observations made in it that “an independent suit of a defendant(in the bank's application) can be deemed to be a counterclaim and can be transferred to the Tribunal, will apply only if the following conditions were satisfied:

(i)The subject-matter of the bank's suit, and the suit of the defendant against the bank, should be inextricably connected in the sense that decision in one would affect the decision in the other.

(ii)Both parties (the plaintiff in the suit against the bank and the bank) should agree for the independent suit being considered as a counterclaim in the bank's application before

the Tribunal, so that both can be heard and disposed of by the Tribunal."

7. In the present case, it is not in dispute that the second condition as observed by the Supreme Court in the Indian Bank's case (supra) is not satisfied and, therefore, in view of the law laid down by the Hon'ble Supreme Court, the learned Trial Judge was justified in rejecting the prayer made by the petitioner by moving application (Exh.62) before the Trial Court and, therefore, no interference is warranted in the impugned order. It may be noted that the parties to both the proceedings are also not the same and, therefore, also the learned Trial Judge was justified in rejecting the application for transfer of the suit.

8. In view of the above, the petition stands dismissed with no order as to costs. Rule discharged. Interim relief, in any, shall stand vacated.

(Bankim N. Mehta, J.)

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